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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 | UNITED STATES OF AMERICA,

14 Plaintiff,

15 |

vs.

16 MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

Defendants.

CASE NO. 3:18-cr-00577-CRB

**Defendant Stephen Chamberlain's
Response to Court Order [ECF 246] and
Reply in Further Support of His Motion to
Compel the Government to Secure the Trial
Attendance of Rob Knight or, in the
Alternative, to Issue a Rule 15 Order for
Deposition [ECF 234]**

Date: November 3, 2023

Time: 10:00 a.m.

Place: Courtroom 6 (via Zoom)

Assigned to Hon. Charles R. Breyer

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1 The Government's opposition makes clear that the essential facts are not in dispute. Rob
 2 Knight is currently a partner at Deloitte. Deloitte is a party to a cooperation agreement with the
 3 Government. The Government is not willing to enforce the terms of that agreement to require
 4 Deloitte to produce one of its partners/part-owners as a witness. Moreover, Mr. Knight was a
 5 senior member of Deloitte's audit team for Autonomy. He was directly involved in reviewing and
 6 approving of transactions in this case where the Government alleges accounting misconduct by
 7 Mr. Chamberlain. That the Government would prefer testimony from a lower-level Deloitte
 8 accountant, Mr. Welham, should not alleviate their obligations under the cooperation agreement.
 9 Nor should it dictate whom the jury gets to hear from.

10 In addition to replying to the Government's opposition to Mr. Chamberlain's motion, this
 11 reply responds to the Court's Order for Supplemental Briefing (ECF No. 246). *See infra* Sections
 12 II.B.2 and III.

13 **I. THE GOVERNMENT MUST SECURE THE ATTENDANCE OF ROB KNIGHT**

14 The Sixth Amendment provides the right to compel witnesses to testify at trial. *Soo Park v.*
 15 *Thompson*, 851 F.3d 910, 919 (9th Cir. 2017). "Few rights are more fundamental than that of an
 16 accused to present witnesses in his own defense[.]" *Taylor v. Illinois*, 484 U.S. 400, 408 (1988).
 17 "[A]t a *minimum* . . . criminal defendants have the right to the government's assistance in
 18 compelling the attendance of favorable witnesses at trial . . ." *Id.* (emphasis added).

19 The Government's opposition makes clear that it has failed to do what the Supreme Court
 20 has described as the "minimum" required to protect Mr. Chamberlain's Sixth Amendment right to
 21 compulsory process. Despite the fact that the Government has entered into an agreement with
 22 Deloitte requiring it to make Deloitte witnesses available, the Government has chosen to read the
 23 agreement in a manner that avoids requiring Deloitte to make a percipient witness available. The
 24 Government's lack of assistance falls far short of what is required under the Sixth Amendment.¹

25
 26
 27 ¹ The Government does not appear to contest Mr. Chamberlain's argument that Mr. Knight's
 28 testimony is material. *See* Gov. Opp'n at 2:18-3:28.

1 **A. The Agreement is Enforceable as to Deloitte**

2 The Government concedes that it has the ability under the agreement to compel Messrs.
 3 Knights, Mercer, Welham, and Murray to testify at trial should the defendants wish to call them.
 4 Gov. Opp'n. at 3:1-3. The Government attempts to distinguish between Mr. Knight and the four
 5 named Deloitte witnesses because the cooperation agreement does not mention Mr. Knight by
 6 name.²

7 The question is simply whether a cooperation agreement with Deloitte covers a Deloitte
 8 partner. The apparent purpose of making Messrs. Knights, Mercer, Welham, and Murray
 9 additional parties was so the Government was assured access to them even if they were to leave
 10 Deloitte. ECF No. 220-2 (Exhibit 1) ("cooperation shall include, but is not limited to . . .
 11 [c]ontinuing to cooperate in good faith, in the manner described herein, even if Messrs. Knights,
 12 Mercer, Welham, or Murray decide to leave Deloitte LLP"). By making Deloitte itself a party, the
 13 Government wanted to ensure continued access to anyone still at Deloitte.

14 The Government's decision not to require Mr. Knight to be a party to the agreement would
 15 be relevant to this discussion only if Deloitte no longer had effective control over Mr. Knight. But
 16 Mr. Knight currently is a partner at Deloitte. Whether Deloitte attempted to negotiate a limit to its
 17 obligation to produce its own employees under the agreement, it certainly did not do so.

18 The Government also misinterprets Mr. Chamberlain's position with respect to the scope
 19 of the agreement. Mr. Chamberlain asks the Government to secure Mr. Knight's attendance by
 20 enforcing the provision that Deloitte "agree to cooperate fully and in good faith with the Office . . .
 21 regarding all of the facts and circumstances of this case . . ." *Id.* Mr. Chamberlain does not
 22 "seize" on the provision requiring Deloitte to agree to meet with the Government in London, *see*
 23 Gov. Opp'n at 2:24-25. Rather, Mr. Chamberlain cited that provision as an example of one of the
 24 specific manners in which Deloitte agreed to cooperate.

25 The agreement makes clear that the enumerated examples of Deloitte's obligations to
 26

27 ² We doubt that the Government would be taking the same position if it was the Government,
 28 not the defense, that wanted testimony from Knight.

1 cooperate were intended to be exemplary and not exhaustive. ECF No. 220-2 (Exhibit 1) (“each
 2 agree that cooperation shall include, but is not limited to . . . [enumerated examples.]”). Deloitte
 3 and the Government are sophisticated parties. Both are aware that an entity’s agreement to
 4 “cooperate fully” includes making its employees available to testify.³

5 **B. The Court Should Require the Government to Enforce the Agreement**

6 Defense counsel is aware of no steps taken by the Government to secure Mr. Knight’s
 7 attendance. The underlying principles of the cases on which Mr. Chamberlain relies remain
 8 unchallenged. *Taylor*, 484 U.S. at 408 (“[A]t a *minimum* . . . criminal defendants have the right to
 9 the government’s assistance in compelling the attendance of favorable witnesses at trial”) (emphasis added); *United States v. Theresius Filippi*, 918 F.2d 244, 247 (1st Cir. 1990)
 10 (government’s failure to assist in procuring parole visas for defense witnesses violated defendant’s
 11 Sixth Amendment right to compulsory process); *see also United States v. Saipov*, 412 F. Supp. 3d
 12 295, 303 (S.D.N.Y. 2019) (ordering prosecutors to apply for visas for defense witnesses and
 13 noting the Government’s offer to facilitate Rule 15 depositions should that avenue fail). Like in
 14 *Theresius Filippi* and *Saipov*, the Government in this case has the ability to compel an entity
 15 whom it controls to act to secure the attendance of a defense witness. By their refusal to enforce
 16 the cooperation agreement, the Government and Deloitte are taking steps to block Mr.
 17 Chamberlain’s access to a key witness. This amounts to a violation of Mr. Chamberlain’s Sixth
 18 Amendment right. *Id.*

19 **II. THE COURT SHOULD ORDER ROB KNIGHT’S DEPOSITION**

20 If the Court refuses to compel the Government to honor the cooperation agreement, Mr.
 21 Chamberlain requests that the Court order Mr. Knight’s deposition under Rule 15(a) of the Federal
 22 Rules of Criminal Procedure. In response, the Government attempts to further restrict Mr.
 23

24
 25 ³ Deloitte’s agreement with HP to produce relevant witnesses in the related U.K. civil case
 26 demonstrates Deloitte’s acknowledgment that Mr. Knight was one of the key individuals involved
 27 in the Autonomy audit. Decl. of Lincenberg ¶ 3, Ex. 1 at 18 (Schedule listing Mr. Knight as the
 28 third-most-senior Deloitte witness, above Messrs. Welham and Murray). This agreement was
 executed on the day before Deloitte’s agreement with the Government. ECF No. 220-2 (Exhibit
 1).

1 Chamberlain's access to a critical defense witness. The Government does not dispute that, if Mr.
 2 Knight is not compelled to testify in the United States pursuant to the cooperation agreement, he is
 3 unavailable. The only issue in apparent dispute is whether Mr. Knight's testimony is sufficiently
 4 important to Mr. Chamberlain.

5 **A. The Government Fails to Dispute that Rob Knight is an Important Witness**

6 In opposing Mr. Chamberlain's alternative request for a Rule 15 order, the Government
 7 fails to contest certain key facts that establish Mr. Knight's materiality and justify the issuance of a
 8 Rule 15 order: (1) Mr. Knight was the Senior Audit Manager on the Autonomy audit in 2009; (2)
 9 he was senior to Mr. Welham (and senior to Mr. Murray and Antonia Anderson) during the
 10 relevant period; (3) even after his transition off the Autonomy audit team, he continued to be
 11 involved in Deloitte's review of Autonomy's financial statements and played the role of "skeptical
 12 auditor" to provide a fresh perspective and to help ensure Deloitte's independence from Autonomy
 13 management; (4) he is a percipient witness to many of the accounting judgments Mr. Chamberlain
 14 now stands accused of making with the intent to defraud; and (5) he has testimony that is
 15 favorable to Mr. Chamberlain's defense. This justifies a Rule 15 order.

16 **B. The Government's Arguments Undermine the Purpose of Rule 15**

17 Rule 15 does not require a conclusive showing of materiality. *United States v. Omene*, 143
 18 F.3d 1167, 1170 (9th Cir. 1998); *see also United States v. Trumpower*, 546 F. Supp. 2d 849, 854
 19 (E.D. Cal. 2008) (percipient witnesses are material under Rule 15). Nevertheless, the Government
 20 argues that Mr. Chamberlain has not met the Rule 15 standard because: (1) his alleged co-co-
 21 conspirators decided not to call Mr. Knight in prior proceedings; (2) there are other witnesses to
 22 the events at issue; and (3) Mr. Knight's statements are not "particularly exculpatory." For the
 23 following reasons, each of these arguments is irrelevant and unpersuasive.

24 **1. Tactics of Mr. Chamberlain's Alleged Co-Conspirators Is Irrelevant**

25 The Government argues that Mr. Chamberlain fails to demonstrate the importance of Mr.
 26 Knight's testimony because "[n]either Lynch nor Hussain saw fit to call Mr. Knight in prior
 27 proceedings." Gov. Opp'n at 4:5-7. This is irrelevant. Indeed, for his own strategic reasons, Mr.
 28 Hussain did not call any Deloitte witnesses in his trial. Dr. Lynch had little interaction with the

1 Deloitte accountants. In his defense, Mr. Chamberlain wants the jury to hear from one of
 2 Deloitte's most senior auditors on the Autonomy audit who dealt closely with certain issues that
 3 the Government will use to suggest Mr. Chamberlain was complicit in a conspiracy.

4 **2. Existence of Other Witnesses Is Irrelevant**

5 The Government notes that there are already "at least five Deloitte witnesses." Gov. Opp'n
 6 at 4:6-7. It is a curious argument to make in a prosecution of an accountant in a complex case
 7 involving dozens of transactions over several years. Indeed, the Government has included no less
 8 than ten accounting witnesses on its witness list.⁴ Mr. Chamberlain had no control over how many
 9 different accountants at Deloitte were involved in the various transactions. Some auditors were
 10 involved in some transactions and some were involved in others. Moreover, with respect to a
 11 particular transaction, each Deloitte auditor played a different role and has different testimony to
 12 offer. There is nothing cumulative about calling a witness in defense to testify from a perspective
 13 that other witnesses do not have about transactions that are part of the Government's case. Mr.
 14 Chamberlain had no say in which Deloitte witnesses the Government decided to interview as part
 15 of its investigation of Autonomy. The Government should not be able to dictate the contours of
 16 Mr. Chamberlain's right to present a defense.

17 The Government fails to identify any *specific* testimony of Mr. Knight cited by Mr.
 18 Chamberlain in his motion as cumulative to that of another Deloitte witness. Instead, the
 19 Government argues *generally* that the testimony of Mr. Knight is cumulative to that of the other
 20 Deloitte witnesses merely because such witnesses were recipients of some of the emails that Mr.
 21 Knight wrote. Gov. Opp'n at 4:10-20. To impose a standard that a Rule 15 deposition of the *writer*
 22 of an email is not important because the recipient of the email is available to testify would limit
 23 Rule 15's availability only to witnesses that were the *sole* witnesses to the events at issue. That is
 24 not the standard, particularly where a defendant's right to present a defense is at issue.

25
 26
 27 ⁴ Antonia Anderson (Deloitte and Autonomy), Steven Brice (expert), Brent Hogenson
 28 (Autonomy), Tom Murray (Deloitte), Reena Prasad (Autonomy), Matt Stephan (Deloitte and
 Autonomy), Percy Tejeda (Autonomy), Ganesh Vaidyanathan (Autonomy), Lee Welham
 (Deloitte), and Chris Yelland (Autonomy-HP).

1 The fact that other Deloitte witnesses were recipients of Mr. Knight's emails does not
 2 undermine Mr. Chamberlain's showing of Mr. Knight's importance to his defense. Mr.
 3 Chamberlain seeks *Mr. Knight's* testimony about the review that *he* conducted; not the testimony
 4 of others who cannot describe the work that Mr. Knight performed and the conclusions that Mr.
 5 Knight reached. The evidence will show that Mr. Knight, an independent auditor, validated Mr.
 6 Chamberlain's accounting judgments. This supports Mr. Chamberlain's defense that he was acting
 7 in good faith.

8 For example, Mr. Knight wrote to members of Autonomy and Deloitte regarding his
 9 review of Autonomy's decision to allocate a portion of the costs of its hardware resales to Sales &
 10 Marketing expense. *See, e.g.*, ECF Nos. 220-5, 220-6 (Exhibits 4 and 5). In those emails, Mr.
 11 Knight expressed *his* opinion on whether the audit evidence was sufficient to support Autonomy's
 12 desired accounting position. Crucially, the other Deloitte witnesses cannot testify to Mr. Knight's
 13 interactions with *Mr. Chamberlain*. As indicated by his prior testimony, Mr. Knight will provide
 14 important context to Deloitte's request for additional audit evidence to support the marketing
 15 aspect of the hardware resales:

16 you always hope to get something extra . . . you hope for the best
 17 quality of evidence that you can get to support a set of transactions.
 18 But in reality you have to go in accepting you're not going to get
 19 something from perhaps EMC to say you know, you might want this
 piece of paper that says yes, you know we've got this allocation
 amongst cost of goods sold and sales and marketing that describes
 exactly what you want to describe, but you're never going to get it.

20 ECF No. 220-4 at 17 (Exhibit 3). This testimony is important to Mr. Chamberlain for at least three
 21 reasons. *First*, it informs the jury that just because Deloitte asked for a specific piece of audit
 22 evidence does not mean that the accounting treatment of a transaction depends on receipt of that
 23 piece of evidence. The failure of Autonomy to satisfy Deloitte's requests does not mean that
 24 Autonomy acted improperly. *Second*, it provides context to Mr. Chamberlain's push for Mr.
 25 Sullivan to obtain audit evidence from EMC. Just like Deloitte, Mr. Chamberlain also hoped to get
 26 what Mr. Knight describes as "something extra . . . the best quality of evidence that you can get to
 27 support a set of transactions." *Id.* There is nothing wrong with Mr. Chamberlain pushing Mr.
 28 Sullivan to obtain the best audit evidence he could from EMC. *Third*, it points out that Deloitte's

1 and Mr. Chamberlain's request for perfect audit evidence was unlikely to be successful—as Mr.
 2 Knight puts it, “you might want this piece of paper that . . . describes exactly what you want to
 3 describe, but you're never going to get it.” *Id.* Like Mr. Knight, Mr. Chamberlain was practical
 4 and understood that one could not always obtain perfect audit evidence. And like Mr. Knight, Mr.
 5 Chamberlain understood that the failure to obtain perfect audit evidence did not undermine the
 6 accounting treatment of that transaction. Despite having the opportunity to do so in its opposition,
 7 the Government has failed to establish that Mr. Knight's above-described testimony is cumulative
 8 to that of other Deloitte witnesses.

9 Mr. Knight also testified regarding Autonomy's decision not to highlight its hardware sales
 10 in its financial statements or the narrative portion of its press releases. Once again, Mr. Knight is
 11 likely to provide critical context to the jury, explaining that, while he always pushed for additional
 12 disclosures, he understood that companies like Autonomy had valid reasons for wanting to limit its
 13 public disclosure to only what was required under IFRS. As Mr. Knight testified, “if clients all
 14 prepared the press release that I want them to prepare, they'd go out of business very, very
 15 quickly, because they'd just be disclosing everything.” *Id.* at 66. Mr. Knight's testimony is an
 16 important rebuttal to the Government's suggestion that Mr. Chamberlain acted improperly in
 17 supporting management's decision not to provide additional disclosures related to hardware. And
 18 the Government does not identify how this testimony is cumulative.

19 With respect to the Microlink acquisition, Mr. Knight was the individual at Deloitte
 20 primarily responsible for reviewing the connection between the owners of Microlink, MicroTech,
 21 and DiscoverTech. ECF Nos. 220-9, 220-10 (Exhibits 8 and 9). The Government is likely to argue
 22 that Mr. Chamberlain misled Deloitte regarding common ownership among these entities. Mr.
 23 Knight was the individual at Deloitte primarily responsible for reviewing this issue and thus is
 24 uniquely qualified to testify to whether Mr. Chamberlain misled Deloitte. Once again, despite
 25 having the opportunity to do so in its opposition, the Government has failed to establish that Mr.
 26 Knight's testimony is cumulative on this issue.

27 With respect to Autonomy's decision to capitalize a portion of Systems Engineers' salaries
 28 as Research and Development (“R&D”) costs associated with Structured Probabilistic Engine

1 (“SPE”), Mr. Knight once again was the individual at Deloitte responsible for conducting
 2 important aspects of the review. ECF Nos. 220-7, 220-8 (Exhibits 6 and 7). On October 15, 2009,
 3 Mr. Knight wrote to Mr. Welham to describe the conversation that Mr. Knight had with members
 4 of Deloitte’s National Accounting & Audit Technical Team (“NAA”), Deloitte’s internal experts
 5 to whom the audit team went when they needed assistance on technical issues. Only Mr. Knight
 6 can testify to those conversations, which led to Deloitte’s approval of Autonomy’s decision to
 7 capitalize costs associated with prior quarters in the third quarter of 2009. Given Mr. Knight’s
 8 involvement with this issue in high-level discussions with the NAA, it is also likely that Mr.
 9 Knight was integrally involved in other aspects of Deloitte’s review of the R&D capitalization
 10 issue and will have additional helpful testimony to offer in this respect. The Government has
 11 failed to establish that Mr. Knight’s testimony is cumulative to this issue.

12 Finally, Mr. Knight played a key role in the review of the allegations of accounting
 13 improprieties lodged by Brent Hogenson, an Autonomy US-based finance employee. Mr. Knight
 14 is the Deloitte witness who had discussions with Autonomy Chief Operating Officer and General
 15 Counsel Andy Kanter regarding how to address Mr. Hogenson’s allegations with Autonomy’s
 16 Audit Committee. Decl. of Lincenberg ¶ 4, Ex. 2. Only Mr. Knight can testify to the conversations
 17 he had with Mr. Kanter and only he can testify to Mr. Chamberlain’s lack of involvement in
 18 formulating Autonomy’s response to the Audit Committee. Mr. Knight’s close involvement in
 19 these matters is further highlighted by the fact that Mr. Hogenson copied only two Deloitte
 20 auditors on his email to the Audit Committee: Messrs. Knights and Knight (not Welham or
 21 Murray). Decl. of Lincenberg ¶ 5, Ex. 3 at 2.

22 Notwithstanding the examples cited above and in his original motion (Mot. at 6:13-9:23),
 23 Mr. Chamberlain remains at a disadvantage to address the Court’s request for supplemental
 24 briefing (ECF No. 246). Unlike the Government, Mr. Chamberlain does not have access to any
 25 Deloitte witnesses. Mr. Chamberlain is limited to pointing the Court to (1) examples where Mr.
 26 Knight was the primary auditor responsible for reviewing a particular issue; and (2) examples of
 27 favorable testimony that Mr. Knight gave during a lengthy interview with the U.K. Serious Fraud
 28 Office. *See* Mot. at 6:13-9:23. Based on such information, Mr. Chamberlain has demonstrated that

1 Mr. Knight would testify in his favor.

2 To the extent that the Court has concerns that aspects of Mr. Knight's testimony are
 3 cumulative to that of the other Deloitte witnesses, Mr. Chamberlain notes two additional
 4 distinctions: *First*, as discussed above, Mr. Knight was senior to Messrs. Welham and Murray, the
 5 Government's chosen Deloitte witnesses. He is better qualified to testify to upper-level
 6 discussions internally at Deloitte and with Autonomy management. It was often during these
 7 discussions that Deloitte and Autonomy agreed on the final accounting treatment of a particular
 8 transaction. Messrs. Welham and Murray would not have been party to those discussions. *Second*,
 9 Mr. Knight was not implicated in the proceedings brought by the Financial Reporting Council
 10 ("FRC"), U.K.'s accounting review board, against Deloitte and Messrs. Knights and Mercer. Decl.
 11 of Lincenberg ¶ 6, Ex. 4. As a result, he is the most senior auditor at Deloitte who is not alleged to
 12 have committed misconduct in connection with the audit of Autonomy. To demonstrate that Mr.
 13 Chamberlain never knowingly held back material information, Mr. Knight is an essential witness.

14 It is the Government's obligation, in opposing Mr. Chamberlain's motion, to offer
 15 examples of why the proffered testimony is cumulative. And the Government has not done so with
 16 citations to specific examples.

17 Moreover, it is fundamental to Mr. Chamberlain's Sixth Amendment right to call witnesses
 18 he has good reason to believe would provide testimony *favorable to him*. Mr. Chamberlain should
 19 not be forced to rely on witnesses who have aligned themselves with the other team.

20 **3. Rule 15 Does Not Require a Showing of "Particularly Exculpatory"**
 21 **Statements**

22 The Government argues that Mr. Knight's statements are not "particularly exculpatory."
 23 Gov. Opp'n at 4:20-22. That is not the standard. *See Omene*, 143 F.3d at 1170 (conclusive
 24 showing of materiality not required); *Trumpower*, 546 F. Supp. 2d at 854 (showing that individual
 25 was a witness to the events at issue sufficient under the Rule). Moreover, the Government's view
 26 of what is important to Mr. Chamberlain's defense does not govern.

27 As outlined above and in his motion, Mr. Chamberlain has demonstrated the importance of
 28 Mr. Knight's testimony as to him. The Government fails to undermine that position.

1 **III. LETTER OF REQUEST**

2 Through counsel, Mr. Chamberlain contacted Mr. Knight to see whether, if the Court
 3 grants Mr. Chamberlain's request for a Rule 15 order, the Court would also need to issue a letter
 4 of request through the Hague Convention to compel such deposition. Counsel for Mr. Knight
 5 stated that Mr. Knight does not consent to providing testimony on a voluntary basis in these
 6 proceedings and that Mr. Chamberlain would need to comply with the "normal procedures" to
 7 procure Mr. Knight's testimony. Decl. of Lincenberg ¶ 2.

8 Based on this response, the Court would likely need to issue a letter of request to compel
 9 Mr. Knight's deposition. As the Court has previously recognized in connection with the issuance
 10 of letters of request in this case (ECF No. 96), the Court has the statutory and inherent authority to
 11 use that process to obtain foreign evidence. 28 U.S.C. § 1781; *United States v. Staples*, 256 F.2d
 12 290, 292 (9th Cir. 1958). Such authority includes compelling an individual outside the jurisdiction
 13 of the Court to sit for a Rule 15 deposition. *United States v. Salim*, 855 F.2d 944, 953 (2d Cir.
 14 1988) (affirming district court's admission of deposition testimony secured via Rule 15 and letters
 15 rogatory process); *Villella v. Chem. & Mining Co. of Chile Inc.*, No. 15 CIV. 2106 (ER), 2019 WL
 16 171987, at *2 (S.D.N.Y. Jan. 11, 2019) (recognizing letters rogatory process as mechanism to
 17 compel foreign depositions); *United States v. Al Fawwaz*, No. S7 98 CRIM. 1023 LAK, 2014 WL
 18 627083, at *2 (S.D.N.Y. Feb. 18, 2014) (ordering Rule 15 depositions and using letters rogatory
 19 process to compel witnesses to sit for deposition in the U.K. when it was apparent that such
 20 witnesses refused to voluntarily appear); *United States v. Zavieh*, No. 12-CR-00195 EMC NC,
 21 2013 WL 1283319, at *3 (N.D. Cal. Mar. 27, 2013) (granting request for Rule 15 order and letters
 22 rogatory); *United States v. Jefferson*, 594 F. Supp. 2d 655, 675–76 (E.D. Va. 2009) (recognizing
 23 that letters rogatory process could be used to compel foreign deposition under Rule 15).

24 If the Court denies Mr. Chamberlain's request that the Court compel the Government to
 25 secure Mr. Knight's attendance at trial, and if the Court grants Mr. Chamberlain's alternative
 26 request to take Mr. Knight's deposition, Mr. Chamberlain will promptly submit letters of request
 27 that will allow this Court to obtain judicial assistance from the U.K. to enforce that order.

28 Mr. Chamberlain is not in a position to predict the impact that this process will have on the

1 trial schedule. While it is true that defendants often are challenged in getting governments to
2 execute orders, we are still five months from trial. Respectfully, in any event, this is not a factor
3 that should influence the Court's decision whether to give Mr. Chamberlain access to an important
4 witness.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Mr. Chamberlain respectfully requests that the Court compel the
7 Government to enforce its cooperation agreement with Deloitte to secure the trial attendance of
8 Mr. Knight. Should the Court decline to do so, Mr. Chamberlain requests the Court to issue a Rule
9 15 Order to permit Mr. Knights' deposition to be taken in the U.K.

10

11 DATED: October 26, 2023

BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
12 DROOKS, LINCENBERG & RHOW, P.C.
13

14

By: /s/ Gary S. Lincenberg
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